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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

In re Applications of )  
 )  
PCS 2000, L.P. ) File Nos. 00414-CW-L-96,  
 ) et al.  
For Broadband Block C Personal )  
Communications Systems Facilities )  
 )  
and )  
 )  
Westel Samoa, Inc. ) WT Docket No. 97-199  
 )  
For Broadband Block C Personal ) File No. 00560-CW-L-96  
Communications Systems Facilities )  
 )  
and )  
 )  
Westel, L.P. ) File Nos. 00129-CW-L-97,  
 ) et al.  
For Broadband Block F Personal )  
Communications Systems Facilities )  
 )  
and )  
 )  
In the Matter of )  
 )  
Anthony T. Easton )  
 )  
To: The Commission

MOTION TO CONSOLIDATE

Anthony T. Easton, by his attorneys and pursuant to sections 1.41 and 1.227(a)(1) of the Commission's Rules, hereby requests that the Commission consolidate the following three matters for disposition: (1) the petition for reconsideration Mr. Easton filed with respect to the show cause order issued in WT Docket No. 97-199, see *Westel Samoa, Inc.*, 12 FCC Rcd 14057, 14076 (1997) <sup>1/</sup>; (2) the petition for reconsideration filed by M. Eloise Rosenblatt, as trustee of the SDE Trust ("Trust"), with respect to the notice of

<sup>1/</sup> Petition for Reconsideration, WT Docket No. 97-199 (Oct. 6, 1997) ("Easton Petition").

apparent liability issued to PCS 2000, L.P. ("PCS 2000"), see *PCS 2000, L.P.*, 12 FCC Rcd 1703 (1997) ("PCS 2000 NAL"), and the grant of PCS 2000's above-captioned applications, see *PCS 2000, L.P.*, 12 FCC Rcd 1681 (1997) <sup>2/</sup>; and (3) the application for review filed by ClearComm, L.P. ("ClearComm"), formerly known as PCS 2000, with respect to the denial of its motion to intervene in the hearing in WT Docket No. 97-199. <sup>3/</sup>

The Deputy General Counsel recently stayed the commencement of the hearing in the *Westel Samoa* proceeding so that the Commission could consider Mr. Easton's petition for reconsideration "in a way that best conduces to the proper dispatch of business." *Westel Samoa, Inc.*, FCC 98I-02 (Feb. 3, 1998). We surmise, therefore, that a Commission decision is imminent on issues relating to Mr. Easton's participation in the *Westel Samoa* hearing and the scope of the hearing issues. See *id.* That being the case, it would also conduce to the proper dispatch of business if the Commission consolidates for decision all pending matters presenting issues going to the scope of the *Westel Samoa* hearing.

Common to the matters submitted by Mr. Easton, the Trust and ClearComm is that they all arose from the aftermath of the bidding error made by PCS 2000 during the C Block auction for the Norfolk, Virginia BTA. All three raise issues relating to the preclusive or

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<sup>2/</sup> Petition for Reconsideration, File Nos. 00414-CW-L-96 *et al.* (Feb. 21, 1997) ("Trust Petition").

<sup>3/</sup> Application for Review, WT Docket No. 97-199 (Jan. 26, 1998) ("ClearComm Application"). See also Petition for Stay, WT Docket No. 97-199 (Jan. 26, 1998).

collateral effects of the Commission's claim in its *PCS 2000 NAL* that no evidentiary hearing was necessary to determine that Mr. Easton was guilty of "intentionally misrepresenting facts" concerning PCS 2000's mistaken bid. 12 FCC Rcd at 1714-15. The reputation and financial interests of each will be effected by any re-examination of the Commission's claim and its *PCS 2000 NAL*. See Easton Petition at 24-25; Trust Petition at 13-14; ClearComm Application at 3-4.

Consolidation of these matters makes sense regardless of what action the Commission contemplates with regard to Mr. Easton. In the first place, the consolidation of claims is generally favored in the interests of economy and efficiency, see *Young v. City of Augusta, Georgia*, 59 F.3d 1160, 1168-69 (11th Cir. 1995), while piecemeal litigation is disfavored, see *Air King Products Co., Inc. v. Hazeltine Research, Inc.*, 10 F.R.D. 381, 383 (E.D.N.Y. 1950). Clearly, administrative economy and efficiency would be served if the Commission rules on ClearComm's participation in the *Westel Samoa* hearing at the same time it considers Mr. Easton's participation.

Consolidated consideration of interrelated requests is also appropriate. See *Belo Broadcasting Corp.*, 47 FCC 2d 447, 447 (Rev. Bd. 1974). Here, ClearComm wants to intervene in the *Westel Samoa* hearing because it sees "every indication that [the] proceeding will re-examine [its] conduct addressed in the *PCS 2000 NAL*." ClearComm Application at 4 (emphasis original). It recognizes that the hearing "may contradict" the findings the Commission made in its *PCS 2000 NAL*. *Id.* at 2. The mere possibility that an evidentiary

inquiry would undermine its *PCS 2000 NAL* requires the Commission to re-examine its treatment of ClearComm (PCS 2000), the Trust, and Mr. Easton.

ClearComm's transparent concern that the *PCS 2000 NAL* findings will not survive the *Westel Samoa* hearing reflects an objective view of the new evidence uncovered in discovery. But regardless of how one views that evidence, it is perfectly clear that the Commission did not possess all the relevant facts when it issued the *PCS 2000 NAL*. Thus, the Commission took actions adverse to ClearComm, the Trust and Mr. Easton on the basis of incomplete and insufficient evidence of wrongdoing. The manifest injustice of those actions is the core issue common to the three matters before the Commission.

The Commission's still-unproven finding of wrongdoing "resulted in the imposition of a notice of apparent liability in the amount of \$1 million against ClearComm." ClearComm Application at 1. It was also the basis for the Commission's approval of the Trust's ouster as "an attempt to cleanse the applicant of those responsible for the misrepresentations". Trust Petition at 14 (quoting *PCS 2000 NAL*, 12 FCC Rcd at 1704). And it was obviously the grounds for the three orders published by the Commission "stigmatizing" Mr. Easton without due process of law. See Easton Petition at 7. <sup>4/</sup> The forfeiture order, the approval of the "squeeze out" of the Trust,

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<sup>4/</sup> After in effect pronouncing Mr. Easton guilty, the Commission admitted that a hearing was still necessary "where a decision regarding the credibility of all the witness will be made by an Administrative Law Judge." *Westel Samoa*, 12 FCC Rcd at 14073.

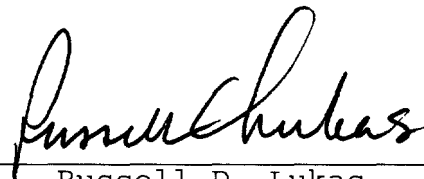
and the vilification of Mr. Easton must be re-examined on a consolidated basis if the Commission is to address effectively the possibility that its PCS 2000 NAL has produced unconscionable injustice.

We submit that the consolidation of the three PCS 2000 bidding error-related matters would promote administrative efficiency, see *Trac Communications, Inc. v. Detroit Cellular Telephone Co.*, 3 FCC Rcd 4864, 4864 (Com. Car. Bur. 1988); conduce to a just resolution of the interrelated issues, see *Carter v. AT&T Co.*, 7 FCC 2d 25, 28 (1967), and ensure the consistency of the Commission's decisions, cf., *Morrison v. National Benefit Life Insurance Co.*, 889 F.Supp. 945, 951 (S.D. Miss. 1995). Therefore, grant of this motion would "best conduct to the proper dispatch of business and to the ends of justice". 47 C.F.R. § 1.227(a).

Respectfully submitted,

ANTHONY T. EASTON

By



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February 11, 1998

**CERTIFICATE OF SERVICE**

I, Katherine A. Baer, a secretary in the law offices of Lukas, McGowan, Nace & Gutierrez, Chartered, do hereby certify that I have on this 11th day of February, 1998, had a copy of the foregoing MOTION TO CONSOLIDATE hand-delivered to the following:

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\*Via facsimile